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**UNITED STATES AND STATE OF ILLINOIS ALLEGE FRAUD
IN LIVER TRANSPLANT PROGRAM AT UNIVERSITY OF ILLINOIS**

Similar claims settled against University of Chicago and Northwestern

CHICAGO -- Three Chicago medical centers improperly diagnosed and hospitalized certain patients in the late 1990s to allow them to become eligible sooner for liver transplants, according to a federal lawsuit and related settlements made public today. The United States and the State of Illinois intervened in a "whistleblower" lawsuit brought by a liver transplant surgeon and professor at the University of Illinois College of Medicine, alleging fraudulent practices in the liver transplant programs at the University of Illinois Hospital (UIH), the University of Chicago and Northwestern Memorial Hospital announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, and Illinois Attorney General Lisa Madigan.

The University of Chicago Hospitals – paying \$115,000 – and Northwestern Memorial Hospital – paying \$23,587 – today settled the allegations, while the state and federal governments are suing the University of Illinois for triple damages of more than \$3 million, alleging that the University of Illinois Hospital engaged in the fraudulent practices so it could increase the number

of liver transplant patients and ensure that it would receive Medicare and Medicaid reimbursement for the procedures.

The University of Illinois suit alleges that between 1996 and 1998, three patients were admitted to UIH for lengthy liver transplant hospitalizations in intensive care, which was not medically necessary at the time. Two of the patients received liver transplants despite failing to meet the criteria established by a national organ sharing network for priority among eligible patients. A fourth patient who received a liver transplant at UIH in 1996 allegedly was ineligible for the procedure because she had liver cancer. The improper hospitalizations and diagnoses enabled UIH to transplant enough patients to meet the minimum number of liver transplants necessary to be certified under the Medicare and Medicaid programs, thus enabling it to receive federal and state reimbursement for the procedures, the suit alleges. In 1998, UIH received approval for Medicare reimbursement for liver transplants based on having completed at least 12 such procedures in 1997 and also in 1996, when it performed 14 transplants, including two that allegedly were fraudulent.

The civil complaint alleges that UIH defrauded Medicare and Medicaid of \$1,001,645.39 as a result of false claims for reimbursement and it seeks three times that amount under the federal False Claims Act. The suit also seeks civil penalties of between \$5,000 and \$10,000 for each false claim. The Illinois Department of Public Aid and the federal government each fund half of Medicaid's budget.

“By falsely diagnosing patients and placing them in intensive care to make them appear more sick than they were, these three highly-regarded medical centers made patients eligible for liver transplants ahead of others who were waiting for organs in the transplant region,” Mr. Fitzgerald said. “Health care fraud is among the highest priorities of the Justice Department and the U.S.

Attorney's Office," he added. Mr. Fitzgerald and Ms. Madigan announced the lawsuit and settlements with the U.S. Department of Health and Human Services and Thomas J. Kneir, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation.

"Organ donation can be a matter of life and death. There is no room for fraud when it comes to deciding which patient receives an organ," Attorney General Madigan said. "These hospitals did not run their liver transplant programs fairly and honestly. Our suit filed today will send a strong message that the hospital's actions are legally and morally wrong."

Livers and other transplant organs are allocated through the Organ Procurement and Transplant Network (OPTN), a nationwide system and registry to allocate donor organs, maintain a waiting list of potential recipients, match recipients with organs and increase organ donations. OPTN operates the United Network for Organ Sharing (UNOS), which establishes medical criteria for patients and assigns them a status level to determine their priority for a liver or other organ transplant. Due to a shortage of available livers, patients not meeting the two highest status levels were less likely to receive a transplant under ordinary circumstances in the late 1990s.

The case began on Feb. 4, 1999, when Dr. Raymond Pollak filed a lawsuit under seal in Federal Court, at first against the Board of Trustees of the University of Illinois and the University of Chicago, alleging violations of the federal False Claims Act, the Illinois Whistleblower Reward and Protection Act and his employment rights. The suit claimed that UIH improperly diagnosed and hospitalized patients and exaggerated the seriousness of their medical conditions to liver Status 1 – confined to intensive care and likely to die within seven days, and liver Status 2A – chronic liver disease with sudden deterioration, in intensive care and likely to die within seven days. In April 2001, Dr. Pollak filed an amended complaint adding Northwestern Memorial Hospital as a

defendant. The case is United States of America and State of Illinois ex rel. Raymond Pollak, M.D., v. Board of Trustees of the University of Illinois and the University of Chicago, 99 C 710 (N.D. Il.).

Dr. Pollak, of Skokie, is a full professor of surgery and director of the Abdominal Organ Transplant Program for UIH at its Peoria campus. Prior to April 1998, he was the director of the University of Illinois' multi-organ transplant program.

Under the False Claims Act, whistleblower lawsuits are filed under seal to allow the government an opportunity to investigate the allegations and decide whether to take an active role in the litigation. After a thorough investigation of the allegations, today the United States and the State of Illinois took over prosecution of the alleged Medicare and Medicaid billing violations involving the University of Illinois, but not Dr. Pollak's wrongful employment allegations. The state and federal governments also intervened together against the University of Chicago, while the United States alone intervened against Northwestern.

Settlement agreements with Northwestern Memorial Hospital and the University of Chicago contend that the United States has certain claims against each for submitting Medicare (Northwestern) and Medicare and Medicaid (University of Chicago) claims in the late 1990s for the following conduct:

- admitting liver transplant-eligible patients to the intensive care unit when it was not medically necessary;
- admitting liver transplant-eligible patients to the hospital when it was not medically necessary;
- billing for these medically unnecessary hospitalizations and services;
- falsely diagnosing patients to justify their placement on the liver transplant eligibility list; and

- falsely identifying patients as “Status 1” or “Status 2A” for the purpose of making them eligible for liver transplants before other patients also in need of transplants.

The University of Chicago conduct also allegedly included transplanting a patient who was medically ineligible to receive a transplant.

Both settlements provide that neither Northwestern nor the University of Chicago admit any wrongdoing or liability, and that the claims are being settled to avoid the delay, expense and uncertainty of protracted litigation.

The University of Chicago today will pay \$115,000, apportioned as follows: \$64,333.26 to the United States, of which the government will pay \$16,093.32 to Dr. Pollak, which is the maximum that he is entitled to receive for his role in bringing the litigation; \$30,500.05 to the State of Illinois; \$10,166.69 to Dr. Pollak; and \$10,000 to Dr. Pollak’s attorney, Robin Potter of Robin Potter & Associates in Chicago.

Northwestern today will pay \$23,587.58, apportioned as follows: \$13,587.58 to the United States, of which the government will pay \$3,396.90 to Dr. Pollak for his role; and \$10,000 to his attorney.

In the University of Illinois civil case, the government has the burden of proving the allegations by a preponderance of the evidence.

The United States is being represented by Assistant U.S. Attorney Lisa M. Noller, and the State of Illinois is being represented by Assistant Attorney General Timothy D. Nimrod.

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